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OFFICE OF PETITIONS

In re Application of
Peter Anthony Miller
Application No. 09/242,072
Filed: January 14, 2000

ON PETITION

This is a decision on the petition filed May 10, 2005, under 37 CFR 1.181(a)(3) requesting the Director exercise his supervisory authority and overturn the decision of the Director, Technology Center 1700 (Technology Center Director), dated January 6, 2003, which refused to: (1) enter the amendment after final Office action filed August 16, 2005; and (2) withdrawal the finality of the Office action mailed March 13, 2002.

The petition to overturn the decision of the Technology Center Director dated January 6, 2003, is **DISMISSED** as untimely.

The file history of the instant application indicates, *inter alia*: (1) a final Office action was mailed March 13, 2002; (2) an amendment after final Office action was submitted June 7, 2002; an Advisory Action was mailed June 25, 2002 refusing entry of the amendment filed June 7, 2002 as it raised new issues that would require further consideration and/or search, raised the issue of new matter, and did not place the application in better form for appeal by materially reducing or simplifying the issues for appeal; (3) an amendment after final Office action was submitted August 16, 2002; (4) a letter was mailed August 23, 2002 indicating that the amendment of August 16, 2002 would not be considered as it was not accompanied by an appropriate extension of time under 37 CFR 1.136(a); (5) a petition under 37 CFR 1.181 requesting supervisory review of the examiner's Office action and including an appropriate extension of time was filed September 5, 2002, and resubmitted September 10, 2002; (6) an Advisory Action was mailed December 10, 2002 refusing entry of the amendment of August 16, 2002 as it raised new issues that would require further consideration and/or search, and did not place the application in better form for appeal by materially reducing or simplifying the issues for appeal; (7) a decision dismissing the petition of September 5, 2002 was mailed January 6, 2003; (8) on April 1, 2003 and April 21, 2003 petitions under 37 CFR 1.181 requesting withdrawal of the holding of abandonment were submitted; (9) on June 6, 2003 a decision dismissing the petition to withdrawal the holding of

abandonment was mailed; (10) on March 5, 2004 a petition to revive the application under the provisions of 37 CFR 1.137(b) was filed; (11) on June 8, 2004 a decision dismissing the petition of March 5, 2004 was mailed; (12) on July 12, 2004, January 25, 2005, and February 2, 2005 petitions under the provisions of 37 CFR 1.137(b) were filed; and (13) on March 1, 2005 a decision dismissing the petitions under 37 CFR 1.137(b) was mailed. The instant petition was filed May 10, 2005.

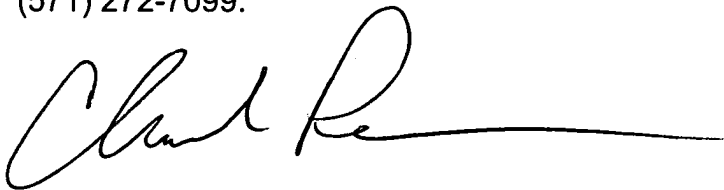
37 CFR 1.181(f) states:

The mere filing of a petition will not stay any period for reply that may be running against the application, nor act as a stay of other proceedings. Any petition under this part not filed within two months of the mailing date of the action or notice from which relief is requested may be dismissed as untimely, except as otherwise provided. This two-month period is not extendable.

Initially it noted that under 37 CFR 1.181(f) the instant petition is untimely and, as such, is dismissed. As noted in Korsinsky v. Godici, 2005 U.S. Dist. LEXIS 20850, (S.D.N.Y. 2005), by operation of regulation, the Commissioner was entitled to dismiss Korsinsky's petition as untimely. This, by definition, was not arbitrary and capricious. Additionally, petitioner's filing of not one but four petitions to revive the application under the unintentional provisions of 37 CFR 1.137(b) is evidence that petitioner acquiesced to the decision of the Technology Center Director.

As petitioner has failed to timely show that the Technology Center Director clearly erred in denying entry of the amendment after final Office action and withdrawal of the finality of the Office action, the petition decision of January 6, 2003 will not be disturbed, and the petition is **dismissed**.

Telephone inquiries concerning this decision should be directed to David A. Bucci at (571) 272-7099.

A handwritten signature in black ink, appearing to read 'Charles Pearson', with a long horizontal line extending to the right.

Charles Pearson
Director, Office of Petitions

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